

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 14, 15, 20, 23, 24, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jp 41-12304.

The Jp 41-12304. reference teaches a method of crystallizing organic acids, Note entire reference. To a solution of an organic acid an base is added to create a organic acid salt. Then addition acid is added to the salt to cause the acid to crystallize out of solution, note translated abstract. The crystallization can be a two done is two acid addition steps, note claims. The crystals then are removed or isolated from the remaining solution, note translation. The sole difference between the instant claims and

the prior art is the amount converted to a salt. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable amount of acid converted in the Jp 41-12304. reference in order to create conditions for crystallization.

Claims 16 to 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jp 41-12304.

The Jp 41-12304. reference is relied on for the same reasons as stated, *supra*, and differs from the instant claims in the means to determine the amounts added. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable amount added in the Jp 41-12304. reference in order to create the proper solubility in the solution to increase yield.

Response to Applicants' Arguments

Applicant's arguments filed July 14, 2008 have been fully considered but they are not persuasive.

Applicants' argument concerning the Jp 41-12304 reference is noted. However, the claims are not as limited in scope as instantly set forth in the arguments. The instant claims clearly recited the addition of the acid to the solution to create the crystalline materials, not the base. The base is used to dissolve the acid salt in the first step. This is done in the reference. A solution is created using a base. Then acid is added to create or precipitate out the acid crystals.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on 571-272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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